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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,169

01/14/2005

Kenji Iwashita

Q85621

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23373 7590 03/14/2008  
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EXAMINER

SALVATORE, LYNDIA

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/521,169	<b>Applicant(s)</b> IWASHITA, KENJI	
	<b>Examiner</b> Lynda M. Salvatore	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6,7 and 14 is/are rejected.
- 7) ☒ Claim(s) 2-4,8 and 11-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's amendment and accompanying remarks filed 12/18/07 have been fully considered and entered. Claims 1 and 14 have been amended and claim 5 has been canceled as requested. Upon further consideration, Applicant's amendment to claim 1 is not found sufficient to overcome the prior art rejections set forth in section 4 of the Office Action dated 9/18/07. The Examiner apologizes for any inconvenience they may have caused Applicant.

***Claim Rejections - 35 USC § 102/103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 7 and 14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Takenaka et al., US 5,021,283.

The patent issued to Takenaka et al., teach a multi-layer non-woven fabric comprising at least three layers of woven fabrics (abstract). With regard to the claimed bonding layer haing a corrugated and wave like shape, Takenaka et al., teach combing portions of the internal layers to form cells having a shape of tetragons, hexagons or a combination thereof. It appears that figure 1 illustrates an internal corrugated or wave like shape. With regard to the fiber material, Takenaka et al., teach employing polyester fibers having a single fiber fineness ranging from .1 to 50 and a multifilament fineness ranging from 50-6000 (column 6, 50-column 7, 30). With regard to the composite yarn limitation, Takenaka et al., teach mixing organic and inorganic filaments to form multi-filaments (column 6, 32-50 and column 7, 30-35). With regard to the air intermingled yarn or covering processed yarn limitation, the Examiner considers the composite

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yarns taught by Takenaka et al., sufficient to meet the covering processed yarn limitation. The specification does not specifically define what constitutes a “covering processed yarn”.

Moreover, the recited "air intermingled" and/or "covering processed yarn" limitations appear to constitute how the yarn is formed (e.g., method and/or process limitations), which is not germane to the woven fabric structure. In other words, said limitations do not appear to materially effect the woven fabric structure. Applicant is invited to prove otherwise.

With regard to the claimed air permeability property set forth in claims 7 and 14, the prior art of Takenaka et al., fails to teach the claimed air permeability. However, it is reasonable to presume that said air permeability property is inherent to the invention of Takenaka et al. Support for said presumption is found in the use of like materials such as polyester filaments and the use of like process such as forming a three dimensional multi-layer woven fabric, which would result in the claimed property. The burden is shifted to Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594

In addition, the presently claimed air permeability property would obviously have been present once the Takenaka et al., product is provided. *In re Best*, 195 USPQ 433

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takenaka et al., US 5,021,283 as applied to claim 1 above.

Takenaka et al., does not teach the claimed distance between the hills and valleys of the bonding layer, however, it is the position of the Examiner that it would be obvious to one having

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ordinary skill in the art to optimize the distance between the hills and valleys as a function of desired loft and three-dimensional properties. It has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215

With regard to the claimed air permeability property set forth in claim 15, the prior art of Takenaka et al., fails to teach the claimed air permeability. However, it is reasonable to presume that said air permeability property is inherent to the invention of Takenaka et al. Support for said presumption is found in the use of like materials such as polyester filaments and the use of like process such as forming a three dimensional multi-layer woven fabric, which would result in the claimed property.

#### ***Allowable Subject Matter***

6. Claims 2-4, 8, 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Specifically, the prior art fails to teach adding the claimed additional yarn constituents set forth in claims 2-4.

#### ***Conclusion***


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lynda Salvatore/  
Primary Examiner  
Art Unit 1794  
3/4/08

<b>Serial Number</b> 	<b>Application No.</b> 10/521,169	<b>Applicant(s)</b> IWASHITA, KENJI	
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